

California Fair Political Practices Commission

March 16, 1989

Michael P. Murphy
Deputy County Counsel
County of San Mateo
County Government Center
Redwood City, California 94063

Re: Your Request for Advice
Our File No. A-89-116

Dear Mr. Murphy:

This is in response to your request for advice regarding mass mailings under the provisions of the Political Reform Act (the "Act"). $^{1}\!\!/$

QUESTIONS

- 1. Does Section 89001 prohibit mailings of more than 200 notices of meetings or hearing notices on agency letterhead assuming the notices do not contain the signatures of elected officials?
- 2. Would such a mailing be prohibited if it contained the signature of one or more elected officials?
- 3. Would such a mailing be prohibited if the subscribing elected official signed only those notices which were mailed to persons residing outside of the jurisdiction from which the official was elected?
- 4. Does the fact that the mailing is of a notice of a hearing or other meeting being conducted by another agency on a matter of significant interest to the program directed by the agency in and of itself exempt the mailing from the "mass mailing" prohibition?

Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

5. Would such a mailing be exempt from the "mass mailing" prohibition if it were mailed in response to a general request by a person who asks to be notified of any matters which the program itself deems of importance on offshore energy issues?

CONCLUSIONS

- 1. Mailings of more than 200 notices of meetings or hearing notices mailed using agency letterhead are not prohibited when they do not contain signatures or photographs of, or other references to, elected officials.
- 2. Mass mailings of the notices which contain the signatures of one or more elected officials are prohibited.
- 3. Mass mailings of the notices which contain the signatures of one or more elected officials are prohibited even when the signed documents are mailed to constituents residing outside of the jurisdiction from which the official was elected.
- 4. Notices of hearings or meetings conducted by other agencies on matters of significant interest to a program directed by your public agency are not exempt from the mass mailing prohibition.
- 5. Unsolicited mailings are permitted when they comply with the requirements set forth in Regulation 18901 discussed below.

FACTS

The Central Coast OCS Regional Studies Program (the "Program") is administered by a committee (known as the board of control) composed of one member of the Board of Supervisors from six central coast counties (Sonoma, Marin, San Francisco, San Mateo, Santa Cruz and Monterey). You are acting legal counsel for the board of control. The Program was formed for the purpose of coordinating the expenditure of state grant funds awarded to each county under the Offshore Energy Assistance Program ("OEAP"). The OEAP is authorized by Public Resources Code Section 35030 et seq. and is intended to provide coastal counties with block grant funds to address local concerns with respect to offshore energy development. The Program is not a separate legal entity.

Among the approved OEAP components for which the six counties have been awarded funds is a public participation component, the purpose of which is to maximize public participation. The board of control (the "board") desires to use OEAP funds for the purpose of mailing notices of upcoming federal hearings and workshops on the Offshore Oil Lease Sale 119 to those persons who have indicated an interest in such proceedings. The Program has developed a list of interested citizens, which list numbers into the thousands. The notices which the board proposes to mail would number over 200, and each notice would be identical in content. The notices would be printed on the letterhead of the Program.

ANALYSIS

Section 89001 prohibits mass mailings at public expense.
"Mass mailing" means more than 200 substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5.)

A mass mailing is "sent at public expense" if any of the costs of design, production, printing or distribution, is paid for with public moneys. (Regulation 18901(a), copy enclosed.) A mass mailing is not prohibited if it contains only information or material sent in response to unsolicited specific requests contained in written correspondence or oral inquiries received by the elected officer or by an agency with which the officer is affiliated. (Regulation 18901(b).)

Mass mailings are prohibited within the meaning of Section 89001 if:

- (1) The name of the elected officer or his or her photograph appears on the document and the elected officer exercises direction or control over the content, production, or distribution of the document; or
- (2) The document is sent at the request or suggestion of the elected officer or his or her agent or the document is signed by or is designated as being from the elected officer or his or her office; or
- (3) The elected officer is affiliated with the agency which produces or distributes the document and either (a) the elected officer is featured in the document or (b) the name, office or other reference to the elected officer or his or her photograph appears on the document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer. An elected official is "featured" in a mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface.

See Regulation 18901(c).

A mass mailing is not prohibited by Section 89001 if the stationery, forms and envelopes used for the mailing are the standard stationery, forms and envelopes of the agency and the name of an elected officer who is affiliated with the agency appears in the standard letterhead or logotype of the stationery, forms or envelopes of the agency, and the mass mailing is not otherwise prohibited under Regulation 18901(c) because of other references to elected officers. (Regulation 18901(e).)

Additionally, mass mailings are not prohibited when they are sent to the elected officer's constituents, relate directly to the official's duties and include solely the time, date, place, and a concise description of the subject matter of a public meeting to be held by the elected official, or announcements of the time, date, place, and subject matter of official events held by the agency which include a listing of elected officers and others who will participate in the events. (Regulation 18901(f)(8) and (10).)

As used in Regulation 18901, "unsolicited" specific request means a communication which is not requested or induced by the recipient elected officeholder or any third person acting at his or her behest. A specific request which is otherwise unsolicited to receive an agency newsletter or mass mailing on an ongoing basis is not deemed "solicited" by the fact that the requestor responds to an agency notice indicating that, absent response, his or her name will be purged from the mailing list for that newsletter or mass mailing. (Regulation 18901(h).) A specific request for continuing information on a subject is considered a request for multiple responses directly related to that subject. A request to receive a regularly published agency newsletter constitutes a "specific request" for each issue of that newsletter. (Regulation 18901(h).)

It follows from the above discussion that the board of control may send notices of hearings and meetings in standard stationery or rosters including the names of the members of the board as long as the members of the board are not featured in the notices, the notices are not signed by the elected officials, and the notices do not contain the names or photographs of elected officials.

Moreover, responses to unsolicited requests for information on board matters are not prohibited. Information provided to those who specifically request it is not prohibited by Regulation 18901. However, the list of interested citizens developed by the board and which you mention in your letter does not constitute "unsolicited" requests unless the list includes only the names of those who have specifically requested to be placed on such a mailing list. Additionally, for this exception to apply, those citizens who have indicated an interest in notices of federal hearings and workshops on the Offshore Oil Lease Sale 119 must have communicated their interest in receiving information to the

board either orally or in writing and not in response to a solicitation from the board.

Do not hesitate to call me at (916) 322-5901 if you have further questions.

Sincerely,

Diane M. Griffiths General Counsel

By: Blanca M. Breeze Counsel, Legal Division

DMG:BMB:1d

Enclosure

Thomas F. Casey, III, County Counsel



T. DANIEL DALY
CHIEF DEPUTY
COUNTY COUNSEL

LILLIAN LEE PORT

COUNTY OF SAN MATEO

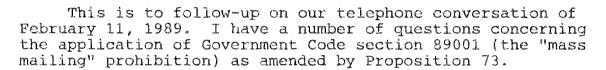
COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

(415) 363-4666

February 16, 1989

Ms. Blanca Breeze FPPC Legal Division 428 "J" Street, Suite 800 Sacramento, CA 95814

Dear Ms. Breeze:



As I informed you, I am serving as counsel for the Central Coast OCS Regional Studies Program (the "Program"). The Program is administered by a committee (known as the Board of Control) composed of one member of the Board of Supervisors from six central coast counties (Sonoma, Marin, San Francisco, San Mateo, Santa Cruz and Monterey). The Program was formed for the purpose of coordinating expenditure of state grant funds awarded to each county under the Offshore Energy Assistance Program (OEAP). The OEAP is authorized by Public Resources Code section 35030 et seq, and is intended to provide coastal counties with block grant funds to address local concerns with respect to offshore energy development. The Program is not a separate legal entity.

Among the approved OEAP components for which the six counties have been awarded funds is a Public Participation component, the purpose of which is to maximize public participation. The Board of Control desires to use OEAP funds for the purpose of mailing notice of upcoming federal hearings and workshops on the Offshore Oil Lease Sale 119, to those persons who have indicated an interest in such proceedings. The Program has developed a list of interested citizens, which list numbers into the thousands. The notices which the Board of Control proposes to mail would number over 200, and each notice would be identical in content. The notices would be printed on the letterhead of the program, an example of which I have enclosed.

Ms. Blanca Breeze FPPC Legal Division Sacramento, CA 905814 February 16, 1989 Page 2.

With this background, I have the following questions:

- 1. Does the amendment to Government Code section 89001, made by Proposition 73, prohibit a mass mailing (over 200 copies) of a meeting or a hearing notice using the program's letterhead, assuming the notice is not signed by any of the elected members of the participating County's Boards of Supervisors, who serve as the Board of Control?
- 2. Assuming that a mailing of over 200 notices using the program's letterhead (as described in question (1) above) is not prohibited, would such a mailing of a notice of hearing be a prohibited mass mailing if it was signed by one or more of the elected officials?
- 3. Would the answer to question (2) be any different if the subscribing elected official signed only those notices which were being mailed to persons residing outside of the jurisdiction from which the official was elected (e.g. notices mailed to persons residing in Sonoma County are signed by the San Mateo County representative on the Board of Control)?
- 4. Does the fact that the mailing is of a notice of a hearing or other meeting being conducted by another agency on a matter of significant interest to the Program, in and of itself, exempt the mailing from the "mass mailing" prohibition?
- 5. Would such a notice be exempt from the "mass mailing" prohibition if it was mailed in response to a general request by a person who asks to be notified of any matters which the program itself deems of importance on offshore energy issues?

Ms. Blanca Breeze FPPC Legal Division Sacramento, CA 905814 February 16, 1989 Page 3.

If there is more information or clarification needed, please call me at 415 363-4762. The Board of Control is meeting again on March 1, so any immediate assistance you can provide would be greatly appreciated.

Thank you for your help.

Yours very truly,

THOMAS F. CASEY, III, COUNTY COUNSEL

MICHAEL P. MURPHY, DEPUTY

MPM: jmm

Enclosure

[breeze]



CENTRAL COAST OCS REGIONAL STUDIES PROGRAM

116 New Montgomery St.Suite 910San Francisco, CA 94105415 243-8003

CENTRAL COAST

Board of Control

SONOMA Emie Carpenter

MARIN Garv Giacomini

SAN FRANCISCO Nancy G. Walker

SAN MATEO Anna G. Eshoo

SANTA CRUZ Gary Patton

MONTEREY Marc J. Del Piero

REGIONAL COORDINATOR

Warner Chabot

MEMORANDUM

DATE:

January 25, 1989

TO:

Board of Control

FROM:

Warner Chabot, Regional Coordinator

RE:

Coordinator's Report and Executive Summary

Since the December BOC Meeting, the Regional Coordinator and the Staff Working Group have completed the following tasks:

- Distributed an additional 15,000 copies of CoastWatch and an additional 60,000 postcards addressed to MMS. \$1,000 was also raised to insert 25,000 postcards in the February Issue of Monterey Life Magazine,
- Initiated an effort to involve schools in the Lease Sale #119 process,
- Revised and expanded the Call for Information Comments while involving the State Legislature in the Negative Nomination process,
- Organized a February 6th, San Francisco Press Conference for State Legislative leaders,
- Prepared a public distribution copy of the Regional Studies Comments on the Call for Information,
- Conducted additional workshops on the Call for Information effort,
- Prepared a monthly financial reporting document,
- Provided additional comments on the Scenario Development Report,
- Conducted long range planning on the Regional Studies Program,
- Delivered testimony at the Monterey Bay Marine Sanctuary hearings,
- Organized a February 20th VIP Tour/Press Event at Ano Nuevo State Reserve,

February 22, 1989

Michael P. Murphy San Mateo County Deputy County Counsel County Government Center Redwood City, CA 94063

Re: Letter No. 89-116

Dear Mr. Murphy:

Your letter requesting advice under the Political Reform Act was received on February 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths

General Counsel

DMG:plh